

**Bonneville Power Administration  
Fish and Wildlife Program FY99 Proposal**

**Section 1. General administrative information**

**Enhance Law Enforcement For Fish & Wildlife  
And Watersheds Of The Nez Perce**

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**Bonneville project number, if an ongoing project** 9202409

**Business name of agency, institution or organization requesting funding**  
Nez Perce Tribal Executive Committee

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**Business acronym (if appropriate)** NPTEC

**Proposal contact person or principal investigator:**

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**Subcontractors.**

<b>Organization</b>	<b>Mailing Address</b>	<b>City, ST Zip</b>	<b>Contact Name</b>
S.P. Cramer & Associates, Inc.	300 S.E. Arrow Creek Lane	Gresham, Oregon 97080	Steven P. Cramer

**NPPC Program Measure Number(s) which this project addresses.**  
8.5C2

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**NMFS Biological Opinion Number(s) which this project addresses.**

The NMFS Biological Opinion on steelhead impacts for Columbia Basin fisheries, October 1997-January 1998. BO on subsequent 1998 winter, spring, and summer fisheries is now in preparation by US v Oregon TAC (Joint CR Mgt. Staff Report 12/10/97).

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**Other planning document references.**

(1) Snake River Salmon Recovery Team (1994): “The BPA, the fishery agencies, and the tribes should continue the Enhanced Fishery Enforcement Program.” (2) Nez Perce, Umatilla, Warm Springs and Yakama Tribes (1995): “Continue coordinated harvest law enforcement; develop habitat protection law enforcement.” (3) Needs Assessment of Tribal Law Enforcement in Columbia River (Vigg and Stevens 1996): Strategic Plan for Tribal Tributary Anadromous Fish Enforcement. (4) The Columbia River Fish Management Plan (1987): The Treaty tribes clearly have co-management responsibility for anadromous salmonids in the Columbia Basin through treaties & litigation. (5) The Endangered Species Act (1973): The ESA specifically lists law enforcement as one of the conservation measures to be used to rebuild T&E species to achieve de-listing. (6) The MOA on BPA Fish & Wildlife Funding (1996): Tribes rights reserved by treaty, executive order, or statute to resources (fish & wildlife) affected by the FCRPS.

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**Subbasin.**

Snake River, Clearwater, Grand Ronde, lower Columbia River.

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**Short description.**

Increase law enforcement (LE) protection of fish, wildlife, their critical habitats and other essential natural resources within watersheds managed by the Tribe. The LE program will be coordinated with all other resource enhancement projects of the NPT.

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**Section 2. Key words**

Mark	Programmatic Categories	Mark	Activities	Mark	Project Types
X	Anadromous fish		Construction	X	Watershed
	Resident fish		O & M		Biodiversity/genetics
	Wildlife		Production		Population dynamics
	Oceans/estuaries		Research		Ecosystems
	Climate		Monitoring/eval.		Flow/survival
	Other		Resource mgmt		Fish disease
			Planning/admin.		Supplementation
		X	Enforcement		Wildlife habitat en-
			Acquisitions		hancement/restoration

**Other keywords.**

FISHERIES REGULATION, RESIDENT FISH, WILDLIFE, HABITAT PROTECTION, RESOURCE MANAGEMENT, ADAPTIVE MANAGEMENT, ECOSYSTEM MANAGEMENT, CULTURAL RESOURCES, TREATY RIGHTS.

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**Section 3. Relationships to other Bonneville projects**

Project #	Project title/description	Nature of relationship
92024	CRITFC /Umatilla / Shoshone-	Cooperative Task Forces & resource

	Bannock Enforcement Projects	sharing
8335000	Nez Perce Tribal Hatchery	Enforce regulations of fisheries targeted on hatchery & supplementation production; protect brood stock in ladder entrances & hatchery ponds; protect incubation and rearing structures (e.g., egg boxes) from vandalism.
8805301	NE Oregon Outplanting Facilities	(same as above)
8909802	Salmon Supplementation - Idaho	(same as above)
9604300	Johnson Creek artificial propagation	(same as above)
9703000	Listed stock adult escapement monitoring	Coordinate with NPT researchers to provide equipment & personnel to assist with tracking and monitoring.
9501300	Nez Perce trout ponds	(same as 83350000 above)

## Section 4. Objectives, tasks and schedules

### *Objectives and tasks*

Obj 1,2,3	Objective	Task a,b,c	Task
1	Provide enhanced enforcement of laws and rules for the protection of anadromous fish, resident fish, wildlife, and their habitats -- with an emphasis on depleted populations on the Nez Perce reservation and ceded lands, including stocks listed under ESA.	a	Task 1.1. Increase the level of law enforcement officers in the field; and maintain the equipment, facilities, and management systems -- to maximize the overall fisheries and habitat enforcement effectiveness.
		b	Task 1.2. Provide required basic training of fisheries enforcement personnel relative to Tribal-specific and basin-wide enforcement responsibilities.
		c	Task 1.3. Increase enforcement efforts during anadromous salmonid runs on the Nez Perce Reservation and ceded lands -- with special emphasis on NMFS Biological opinions on harvest.
		d	Task 1.4. Increase enforcement

			efforts for protection of sturgeon and resident fish in tributary subbasins, and provide inter-tribal support throughout the Columbia Basin.
		e	Task 1.5. Increase enforcement efforts (as in Task 1.3) for protection of critical habitat of anadromous and resident fish in tributary subbasins, and provide inter-tribal support throughout the Columbia Basin.
		f	Task 1.6. Implement an integrated Nez Perce tribal cooperative enforcement operations plan.
		g	Task 1.7. Implement a task-specific reporting system (Enforcement Action Plans and After-Action Critiques) that will be utilized by Nez Perce fish & wildlife patrol officers as a common methodology for developing enforcement plans & specific strategies.
2	Improve cost-effectiveness of fisheries and habitat enforcement efforts via improved coordination with other Columbia Basin enforcement and regulatory agencies via appropriate coordination mechanisms.	a	Task 2.1. Develop an integrated Nez Perce tribal cooperative enforcement operations plan.
		b	Task 2.2. At the command level, the program will be coordinated through the existing law enforcement processes.
		c	Task 2.3. Inter-agency task force operations will be coordinated upon mutual agreement with participating agencies -- including the sharing of equipment and personnel for effective utilization of all available resources.
		d	Task 2.4. Intra-agency operations will be coordinated under the

			authority of field supervisors and will be structured to achieve command level and inter-agency operational goals and objectives.
		e	Task 2.5. Field patrols will be coordinated and developed to compliment the overall objectives of the program.
		f	Task 2.6. Conduct environmental and habitat enforcement in coordination with state and federal regulatory agencies.
		g	Task 2.7. To the extent practicable, coordinate field operations in a specific location with local enforcement agencies, e.g., city police, county sheriffs, and tribal BIA police.
		h	Task 2.8. Work within tribal policy guidelines in an effort to expand enforcement to include protection of spawning and habitat areas in conjunction with "gravel-to-gravel management" and achieve better coordination with tribal conservation LE efforts.
		i	Task 2.9. Explore opportunities for and benefits of increased enforcement in spawning grounds in tribal ceded areas, e.g., the "Tribal Ranger Program" concept developed by member tribes.
		j	Task 2.10. Coordinate with other participating enforcement agencies and the designated monitoring and evaluation (M&E) fisheries consultant to provide data and assistance for the evaluation of the efficacy and accountability of the BPA-funded LE Project.
3	Optimize voluntary compliance of laws and rules to protect Columbia Basin fishes and their critical habitats -- via increased public involvement and	a	Task 3.1. Increase public awareness of the effects of illegal take and habitat degradation on Columbia River Basin anadromous salmonid stocks and resident fish

	deterrence of illegal activities.		species -- with emphasis on the need to conserve depleted naturally spawning stocks.
		b	Task 3.2. Enhance the public awareness and deterrent effect of various law enforcement efforts outlined in Objective 1.
		c	Task 3.3. Develop measurement criteria & methods to evaluate the effectiveness of public awareness, deterrence, and compliance with laws and rules for the protection of depleted fish stocks and their critical habitats in Nez Perce Tribal lands.
4	Maximize the annual and long-term efficacy of enforcement efforts through the development of annual operational and 5-year strategic plans for Nez Perce fisheries, wildlife and critical habitat -- within the framework of watershed planning.	a	Task 4.1. Develop a cooperative enforcement plan for the Nez Perce Tribal law enforcement program, including a specific section on its responsibilities, goals & objectives, planned activities, and expected results within tributary subbasins of the NPT.
		b	Task 4.2. Develop and refine a strategic 5-year plan for Columbia Basin law enforcement, in conjunction with CRITFE and other relevant law enforcement entities.
5	Maximize the accountability of the enhanced LE program and achievement of results for the protection of fish & wildlife and their critical habitats via M&E of the efficacy of the program -- in terms of qualitative and quantitative performance criteria.	a	Task 5.1. Develop performance standards and specific quantitative and qualitative criteria to objectively measure achievement of results.
		b	Task 5.2. Collect and summarize law enforcement statistics using a consistent scientifically valid methodology, and document the results of the enhanced law enforcement program through

			quarterly progress reports, annual reports, and program reviews.
		c	Task 5.3. Cooperate with the independent third-party evaluation of the law enforcement program by providing all relevant information and peer review of evaluation documentation.
		d	Task 5.4. Adaptively manage the Nez Perce law enforcement program by making required changes as indicated by the performance measurements and independent evaluation.
6	Enhance prosecution success rate by increased levels of technical and legal support of state, tribal and federal prosecution processes relative to fisheries cases made as a result of the increased law enforcement within the Nez Perce jurisdiction.	a	Task 6.1. Provide support to appropriate Nez Perce legal councils to assure timely prosecutions of all violators.
		b	Task 6.2. Work with CRITFC and participating entities to set up processes for coordination of case prosecutions within the Nez Perce jurisdiction.
		c	Task 6.3. Set up a data base of fishery related cases initiated within the Nez Perce jurisdiction to assess the effects of prosecution and judicial processes as a component of a "preventative" law enforcement program.

***Objective schedules and costs***

<b>Objective #</b>	<b>Start Date mm/yyyy</b>	<b>End Date mm/yyyy</b>	<b>Cost %</b>
1	1/1999	12/1999	76.00%
2	1/1999	12/1999	2.25%
3	1/1999	12/1999	5.25%
4	11/1999	12/1999	3.50%
5	8/1999	12/1999	7.75%

6	1/1999	12/1999	5.25%
			TOTAL 100.00%

**Schedule constraints.**

Constraints: funding available January 1, 1999; retention of qualified officers on staff; academy training schedules; cooperation of co-management entities. Milestones: hiring of personnel; requisite officer training completion; equipment procurement.

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**Completion date.**

2003

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## Section 5. Budget

***FY99 budget by line item***

Item	Note	FY99
Personnel		\$136,356
Fringe benefits		\$20,453
Supplies, materials, non-expendable property		\$45,004
Operations & maintenance		\$80,165
Capital acquisitions or improvements (e.g. land, buildings, major equip.)		\$0
PIT tags	# of tags:	\$0
Travel		\$15,000
Indirect costs		\$93,258
Subcontracts		35000
Other		
<b>TOTAL</b>		<b>\$425,236</b>

***Outyear costs***

Outyear costs	FY2000	FY01	FY02	FY03
Total budget	\$400,000	\$400,000	\$400,000	400,000
O&M as % of total	17.50%	17.50%	17.50%	17.50%

## Section 6. Abstract

**6. NPT Enforcement Abstract:**



The overall goal of the Nez Perce Tribe's law enforcement (LE) project is to increase protection of fish & wildlife on all watersheds under our jurisdiction. LE protection includes two primary components (1) reduce illegal take of Columbia Basin fish & wildlife, and (2) enforce habitat rules & regulations. Specific goals and objectives of the NPT enforcement project are consistent with the regional enhancement efforts, including: the NPT fisheries Resource Management Program; the CBFWA multi-year implementation Plan, the NPPC Fish & Wildlife Program; the anadromous fish restoration plan of the Nez Perce, Umatilla, Warm Springs and Yakama Tribes (1995), and the NMFS & USFWS ESA recovery plans. The conceptual scope of the LE program is the entire life cycle of the target fish species, i.e., "gravel to gravel". The geographical scope of Nez Perce enforcement is primarily the Nez Perce reservation and ceded lands in the tributary subbasins of the Columbia River system. The approach is threefold: (1) substantially increase the levels of harvest & habitat law enforcement on Nez Perce watersheds; (2) enhance the efficiency of this effort by promoting cooperation among all relevant entities; and (3) educate the public on the plight of depleted fish & wildlife stocks and the need to protect their critical habitats. We will adaptively manage the LE program via monitoring and evaluation --according to biologically-based performance criteria. The evaluation of desired/actual achievements are in terms of: Inputs (e.g., budget, personnel, equipment), Outputs (e.g., fishery statistics, contacts, arrests, seizures, etc.), and Outcomes (e.g., fish & wildlife saved, critical habitats protected).

## **Section 7. Project description**

### **a. Technical and/or scientific background.**

#### **7. NPT Enforcement Project Description -- a. Background:**

##### **Introduction -- Background Information**

Since the inception of the enhanced fisheries law enforcement (Project 92-024) in 1991, Columbia Basin Tribes expressed an interest to the Bonneville Power Administration (BPA) for enhanced law enforcement resource protection on reservations and ceded lands. For six years, BPA declined to fund tribal fish & wildlife proposals. However, BPA supported the concept of a "*needs assessment*" to determine if additional fishery and habitat law enforcement by individual tribes in tributary subbasins would have the potential to increase the protection of Columbia Basin fish stocks.

The Columbia River Inter-Tribal Fish Commission (CRITFC) contracted with *S. P. Cramer & Associates, Inc.* to conduct a needs assessment for additional tribal tributary fisheries enforcement in the Columbia Basin. The final report quantified various aspects of a tribal tributary enforcement program, including: (a) the policy position of regional fish & wildlife law enforcement entities on related issues, and (b) an evaluation of the 1995 level of enforcement effort achieved by the entities participating in BPA Project 92-

024 in various regions of the Columbia Basin (Vigg and Stevens 1996). All of the state, federal, and Inter-Tribal enforcement representatives unanimously concurred that the results of the *Tribal Tributary Law Enforcement Needs Assessment* should be used to make decisions regarding funding of the Tribal enforcement component for FY 1997. The primary conclusion of the assessment was that additional Tribal fisheries and habitat enforcement was needed to provide enhanced protection for anadromous salmonids on reservations and ceded lands within the Tributary subbasins above Bonneville Dam (Vigg and Stevens 1996, page 70):

“My analysis of LE effort clearly showed that the intensity of fisheries and habitat enforcement in tributaries is very low at present ( $< 0.8$  hrs/mi<sup>2</sup>/year) throughout the Columbia Basin above Bonneville Dam. In comparison, the annual intensity of enforcement effort in mainstem fisheries areas is much greater, i.e., 35 to 110 hrs/mi<sup>2</sup>. In response to issue statements in a questionnaire, most (92%) of the LE chiefs and salmon managers agreed that additional Tribal Fish & Wildlife enforcement officers could provide enhanced protection to anadromous fish and their critical habitats in the Columbia Basin. I conclude that the effectiveness of the Columbia Basin Law Enforcement Program could be greatly improved by integrating and coordinating additional fish and habitat enforcement effort by Indian Tribes on reservations and ceded lands.”

A statement of work was developed for implementation of Tribal fish & wildlife law enforcement on reservations and ceded lands within the Columbia Basin (Vigg 1996). The Nez Perce, Umatilla, and Shoshone-Bannock tribe's fish & wildlife enforcement contracts were subsequently funded by BPA in FY 1997, for implementation beginning in January 1997.

A five-year Performance Evaluation was initiated by Captain John Johnson, Columbia River Inter-Tribal Fisheries Enforcement Department (CRITFE) -- in response to uninformed statements made by the Independent Scientific Group (ISG) and a negative review by the Northwest Power Planning Council in April, 1997. In *Return to the River*, the ISG<sup>1</sup> (1996) stated that there was a low level of proof<sup>2</sup> for the hypothesis that salmon and steelhead returns to spawning areas can be limited to some degree by illegal harvest in the Columbia and Snake Rivers. Furthermore, the Law Enforcement Program was severely criticized by Oregon Council members and staff (as reported by the NW EnerNet News Service Newsletter):

*But the council found that the size of the bang is still unquantified, and they were clearly frustrated by the lack of answers about the value of the law enforcement program that remains BPA's most expensive non-capital program in the fish and wildlife arsenal. Funding for FY 98 is pegged at*

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<sup>1</sup> The official review group for the NPPC Fish & Wildlife Program is now called the “Independent Scientific Advisory Panel” (ISAP).

<sup>2</sup> The ISG assigned level of proof 4 defined as “Speculative, little empirical support”.

*\$4.6 million. After the meeting, Brogoitti was succinct. "I think this program is in deep trouble, and I know there are others on the council who feel this way, too."*

The S.P. Cramer & Associates' performance evaluation of the CRITFE program summarized fisheries statistics, adult salmon inter-dam conversion rates, and enforcement statistics of the mainstem Columbia River during 1992-1996. The evaluation documented the successful implementation and achievement of biological results of the Inter-Tribal enforcement program in Zone 6 (Vigg August 21, 1997).

In July 1996, BPA contracted with a consultant group to conduct an evaluation of its multi-agency basin-wide Law Enforcement (LE) Program during 1996-97. The results of that evaluation by *Harza* and *Research into Action* {Draft released in June 1997 and final published in October 1997} concluded that the LE Program was successful in the implementation of its objectives and was cost-effective in achieving its goal of enhancing Columbia Basin fish & wildlife via increased enforcement protection.

The Columbia Basin Fish and Wildlife Authority (CBFWA) recommended continued funding of the Columbia Basin Law Enforcement Program, at a funding level of \$4.0 million for FY 1998. However, the Power Planning Council did not comply with the funding recommendation of CBFWA nor the findings of independent LE Program evaluations<sup>3</sup>. At its September 18th meeting in Montana, the Northwest Power Planning Council voted to eliminate the BPA-enhanced LE Program for 1998. The Council acknowledged that they made *"this recommendation for reasons that have little to do with whether the law enforcement is 'effective' or not"*. The Council did, however, leave the door open to restore funding for components of the law enforcement program *"that are tied to the core purposes of the Act, do not present an 'in lieu' issue under the Act, and are associated with activities funded under the Program...."*

On November 13, 1997, the four Columbia River Treaty tribes initiated a law suit against the Northwest Power Planning Council over 1998 salmon recovery funding. The Tribes filed a petition with the Ninth Circuit Court that asks for a review of the Council's 1998 annual work plan. The Council has held up over \$45 million in funding for tribal hatchery projects, tribal law enforcement funding, and other salmon recovery proposals -- pending further scientific review (NW Fishletter December 2, 1997). In a November 13 press release, CRITFC director Ted Strong said the Council program was criticized by its own group of independent scientists, who said it lacked a coherent vision. He said the Council was now using that lack of vision to keep the tribes from implementing the vision articulated in the tribal fish restoration plan. Ted Strong stated: *"The Council has not convinced me that cutting funding for tribal projects is anything other than discrimination against the tribes," ... "There is no science here. I have yet to see an*

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<sup>3</sup> The Council's action did not take into consideration the recently completed independent evaluation conducted by S.P. Cramer & Associates nor the Harza and Research into Action studies commissioned by BPA.

*explanation of how the tribal projects are inconsistent with the existing Fish and Wildlife Program.*

## The Goal, Scope, and Approach of the BPA Enhanced Law Enforcement Program

**Goal.** The goal of the BPA-enhanced system-wide Law Enforcement Program is to reduce illegal take<sup>4</sup> of Columbia River Basin salmon, steelhead, and resident fish, and thereby help to rebuild all native fish populations within the basin. Illegal take includes illegal harvest of adults and juveniles, harassment of spawners attending redds, destruction eggs or fry within redds, direct mortality of juveniles caused by various human activities (e.g., water diversion), and degradation of critical habitat within the mainstem and tributary watersheds.

Specific goals and objectives of the Nez Perce Tribal fisheries enforcement projects are consistent with that of regional fish & wildlife conservation and enhancement efforts, i.e.:

- ◇ the basin-wide enforcement goal stated above ;
- ◇ the goals and objectives of the Nez Perce Tribe's fisheries Resource Management Program;
- ◇ the comprehensive Fish and Wildlife enhancement actions as planned in the CBFWA multi-year implementation Plan (MYIP), and the Northwest Power Planning Council's Fish & Wildlife Program; and
- ◇ the salmon, steelhead and sturgeon recovery efforts described in proposed recovery plans of the four Treaty Tribes (Nez Perce, Umatilla, Warm Springs and Yakama Tribes 1995), the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

This Project Description details the structure of the law enforcement program, the cooperation among enforcement and fisheries management entities, and the specific work to be performed under BPA funding. This is a technical document to describe the comprehensive, integrated nature of the program and in no way affects the sovereign rights, jurisdictions, or policy positions of the Nez Perce Tribe.

**Scope.** The conceptual scope of the overall program is the entire life cycle of the target fish species, i.e., "gravel to gravel". The geographical scope of the Nez Perce enforcement program is primarily the Nez Perce reservation and ceded lands in the tributary subbasins of the Columbia River system. Furthermore, in cooperation with the Columbia River Inter-Tribal Fish Commission, the Nez Perce Tribe assists with mainstem fisheries enforcement in Zone 6 of the mainstem Columbia River. The enhanced Nez Perce Tribal enforcement protection will also extend to all other fish &

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<sup>4</sup> The ESA defines "take" as follows: "*The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*"

wildlife populations within Nez Perce territory, including white sturgeon, resident fish and wildlife. This enhancement “spin-off” benefit is considered by all participants to be beneficial to fish & wildlife resources of the Columbia Basin.

**Approach.** The approach we are taking is threefold. First, to substantially increase and maintain the levels of harvest and habitat law enforcement throughout the Nez Perce Reservation and ceded lands. Secondly, to enhance the efficiency of this increased harvest and habitat enforcement effort by promoting cooperation and assistance from appropriate federal, state, tribal, regional and local entities. Thirdly, to educate the public on the plight of specific fish stocks that are in danger of extinction and the need to protect their critical habitats; and make the public aware of the importance to society of conserving the tribal cultural values and the diversity of anadromous salmon and steelhead, sturgeon, and resident fish & wildlife for future generations.

### Geographic Scope of Nez Perce Off Reservation, Treaty Reserved Fishing Rights Subject to Tribal Regulatory Jurisdiction

The information in the following section was derived from a proposal dated March 1992, Silas Whitman, Nez Perce Fishery Resource Management, Department Manager.

Within the 761,000 acre Nez Perce reservation, the Tribe has exclusive jurisdiction to regulate its own tribal members and any other Indian authorized to fish by tribal authority. As a general rule, state jurisdiction within Indian Country is preempted both by federal protection of tribal self-government and by federal treaties and statutes on other subjects relating to Indians, tribes, their property and federal programs. Cohen, Handbook of Federal Indian Law, 349 (1982 Ed.)

The Nez Perce Tribe has what might be deemed near exclusive jurisdiction to regulate tribal members exercising treaty reserved fishing rights at all off reservation, usual and accustomed locations. The geographic scope of such rights includes, at a bare minimum, that portion of the original 13,204,000 acres that were exclusively used and occupied by the tribe including the 761,000 acres contained within the present reservation where the Tribe has exclusive rights. That area includes major portions of the Snake, Salmon and Clearwater Rivers and their drainages situated in three states - Washington, Oregon and Idaho. In addition, there are many Nez Perce usual and accustomed fishing sites located beyond that aboriginal territory. Undoubtedly the best example of that is represented by the rights of the Nez Perce Tribe to fish pursuant to treaty rights in the lower Columbia River as determined by the U.S. v. Oregon litigation.

The Nez Perce Tribe continues to play a key role in anadromous fish management. However, instead of being the sole manager as it was over a century ago, the Tribe works amidst the multitude of state, federal and tribal agencies having management authority and the groups and organizations that have an interest in the fish themselves.

In aboriginal times as well as in the early historical period, the Nez Perce Tribe was free to resort to fishing sites in the lower Columbia River and frequently did so to participate in the earliest part of anadromous fish runs. At that time, fishing could occur on nearly a year around basis because of the numbers and sizes of the runs. Commercialization of the anadromous fish by non-Indians, the fish wheels, dams and a number of other events have severely decreased the numbers of fish that ascend and descend the Columbia River.

Within the Columbia River Fish Management Plan the Nez Perce Tribe has agreed, among many other things, to limit fishing by its tribal members on the Columbia River runs until escapement goals established for those runs are met. The effect of this agreement has been felt yearly as the opportunities to fish for ceremonial, subsistence and commercial purposes have been limited in an effort to allow fish runs of low numbers to rebuild. Rebuilding of runs is among the specific targets established by the Plan. The difference between once having the opportunity to fish nearly every day of the year and the number of days allowed under the plan is considerable.

Self-imposed limitations of the Nez Perce Tribe extend beyond the Columbia River. In the upper tributaries of the Snake and Clearwater Rivers where fishing is outside the scope of the Columbia River Fish Management Plan and within the realm of tribal-state issues, there have been additional measures taken. Attached as Exhibit C is a copy of Nez Perce Resolution NP 91-190 by which the Nez Perce Tribal Executive Committee closed all tributary fishing for spring, summer and fall chinook specifically because of endangered species concerns. This closure left only returns to Rapid River hatchery as a source of subsistence fishing in the upper river system. Low returns precluded even that possibility last year. It is expected that tributary fishing will be closed again this year by tribal action.

In undertaking these efforts, the Nez Perce Tribe necessarily interacts with other governmental agencies and user groups. The quality of the working relationship between the Tribe and State of Idaho has varied widely in years past. However, recent efforts to stabilize that relationship and formalize a sound basis for cooperative efforts has begun to yield results. A Memorandum of Agreement was developed between the Tribe and State to strive for cooperative efforts, exchange information and improve communications with regard to fish and wildlife issues. It is intended that this basic MOU serve as the foundation for additional, more detailed agreements in the future.

The Nez Perce Tribe and the State of Idaho have also entered into agreements with regard to wildlife mitigation for Dworshak Dam. These included an initial agreement signed in January of 1991 defining the responsibilities of the State and Tribe for wildlife mitigation for Dworshak and the final agreement to which BPA was a party that was executed in a formal ceremony March 10, 1992.

Presently, a draft agreement with regard to the management of, and tribal harvest of fish from, Rapid River Hatchery has been developed by the Tribe and is under consideration

by the State. Discussions have begun about using written agreements to resolve other fish and wildlife issues that could lead to litigation unless resolved by negotiated agreement.

The nature and extent of Nez Perce treaty fishing rights and the ESA issues indicate that the Nez Perce Tribe should focus enforcement efforts on that portion of the Columbia River above McNary Dam to the mouth of the Snake River, from the mouth of the Snake River upstream to Hells Canyon Dam, the Clearwater River and the Salmon River as well as the tributaries to those rivers where endangered or threatened species might migrate. The Nez Perce Tribe has jurisdiction to regulate and to enforce its laws against tribal members fishing throughout those locations.

The submission of this proposal reflects the commitment of the Nez Perce Tribe to enact laws and such regulations as may be necessary in addition to existing laws and regulations to protect threatened and endangered species of anadromous fish. Violators will be charged with a violation of tribal law, cited into the Nez Perce Tribal Court and prosecuted there by the Nez Perce Tribal Prosecutor.

## BPA's Role In Support of Tribal and Inter-Tribal Enforcement Protection

BPA has recognized the legal authority of Columbia River Inter-Tribal Enforcement (CRITFE) to enforce fisheries in Zone 6 and the value of individual Tribes' fisheries enforcement relative to "government to government" relations (Letter from D. Robert Lohn, BPA to Ted Strong, CRITFC dated January 11, 1995; refer also the BPA Tribal Policy, April 29, 1996).

*Beginning in 1992 the Bonneville Power Administration (BPA) has funded, on a cost-matching basis, the regional entities with established fisheries law enforcement organizations and primary jurisdictions within the Columbia Basin in order to enhance salmon and other depleted fish populations subject to listing under the Federal Endangered Species Act. Accordingly, BPA has funded the Inter-Tribal Fish Commission's Enforcement department (CRITFE) as the primary enforcement entity for fisheries in "Zone 6" of the Columbia River, i.e., the mainstem reach between Bonneville and McNary dams. ...*

*We also recognize the practical and symbolic value of fish and wildlife enforcement officers for individual tribes. Such officers are likely to more aware of local problems and sensitive to local culture. In addition, the presence of such officers serves as a visible reminder of the tribe's legal authority as a government with a treaty relationship to the United States.*

# Nez Perce Tribal Fish & Wildlife Enforcement Multi-Year Strategic Plan Development

## The elements of the Nez Perce Tribal enforcement strategic plan

### Mission

To protect, conserve and enhance fish, wildlife, and their habitats, within the jurisdiction of the Nez Perce Tribe -- via effective law enforcement.

### Vision

We envision optimum fish & wildlife conservation enforcement within the Nez Perce Indian Reservation and Treaty of 1855 boundaries -- in order to enhance and sustain Tribal fisheries, wildlife and the natural ecosystem for future generations.

### Goals

Through the enhanced fisheries, wildlife, and natural resources conservation law enforcement on the Nez Perce Indian Reservation and Treaty of 1855 boundaries:

1. Protect and enhance anadromous salmon & steelhead fishery resources.
2. Protect and enhance sturgeon, resident fish, and wildlife resources.
3. Protect and enhance fish & wildlife habitats, watersheds, and the entire natural ecosystem, as a whole.
4. Protect Nez Perce cultural resources, including enforcement of ARPA and NAGPRA, Antiquities Act, and other related laws.
5. Enhance the ability of Tribal members to gather various natural products for traditional uses such as fuel, food, medicine, and ceremonial purposes.
6. Protect and ensure the safety of Tribal members exercising Treaty Rights.
7. Coordinate with tribal, state & federal enforcement entities and regional fish & wildlife managers to align Nez Perce tribal enforcement with high priority resource protection needs.
  - ◇ Fast Breaking Issues (short term)
  - ◇ Annual Issues (intermediate time frame)
  - ◇ Strategic Issues (long term)

### Objectives

1. Provide enhanced enforcement of laws and rules for the protection of anadromous fish, resident fish, wildlife, and their habitats -- with an emphasis on depleted populations on the Nez Perce reservation and ceded lands, including stocks that are listed under the Endangered Species Act.



2. Improve cost-effectiveness of fisheries and habitat enforcement efforts via improved coordination with other Columbia Basin enforcement and regulatory agencies through appropriate mechanisms.
3. Optimize voluntary compliance of laws and rules to protect Columbia Basin fishes and their critical habitats -- via increased public involvement and deterrence of illegal activities.
4. Maximize the annual and long-term efficacy of enforcement efforts through the development of annual operational and 5-year strategic plans for Nez Perce fisheries, wildlife and critical habitat -- within the framework of a comprehensive watershed & ecosystem management plan.
5. Maximize the accountability of the enhanced law enforcement program and achievement of results for the protection of fish & wildlife and their critical habitats via monitoring and evaluation (M&E) of the efficacy of the program in terms of qualitative and quantitative performance criteria.
6. Enhance prosecution success rate by increased levels of technical and legal support of state, tribal and federal prosecution processes relative to fisheries cases made as a result of the increased law enforcement within the Nez Perce jurisdiction.

#### Nez Perce Enforcement Strategic Plan is based on Adaptive Management:

- ◇ Coordination with regional processes & relevant forums
- ◇ Promote fiscal accountability
  1. BIA Funding
  2. BPA Funding
- ◇ Monitoring & Evaluation: annual collection, analysis & reporting of biological & enforcement data
- ◇ Achieving long term biological results for the fish, wildlife, and environmental resources
- ◇ Technology Transfer -- feed-back loop to improve project planning and implementation
- ◇ Annual Work Plan revision & implementation
- ◇ Strategic Plan Update -- annual iteration

#### Operational Principles of Nez Perce Tribal Enforcement:

- Protect the fishery resources, critical habitats, and the ecosystems upon which they depend.

- Promote a high level of professionalism within law enforcement -- utilizing an advanced police science approach.
- Promote cooperation and coordination with fishery managers, regulatory agencies, and cognizant industry groups -- utilizing best scientific biological knowledge.
- Develop annual operational plans and long-term strategic plans -- to maximize efficiency and effectiveness.
- Opportunistic direction of law enforcement efforts to maximize effectiveness.
  - ◊ Respond to resource threats (urgent needs)
  - ◊ Identify constraints (natural and artificial)
  - ◊ Seek opportunities for enhanced resource protection
- Maximize effort of field officers; minimize costs of necessary administrative processes.
- Share resources among cooperating entities, e.g., utilize CRITFC personnel, equipment, and training for the purpose of promoting teamwork and avoiding duplication of effort.
- Collect valid LE data, conduct M&E of all LE program components and practice adaptive management.
- Promote fiscal accountability and cost-effectiveness.
- Promote Nez Perce Tribal enforcement's credibility as an effective law enforcement entity for protection of fish & wildlife resources -- achieve recognition of fishery managers and regional planning entities.

## Monitoring, Evaluation, Adaptive Management and Project Accountability

The overall LE Program, and specifically the CRITFE and Nez Perce tribal components, were subjected to independent *third-party* scientific monitoring & evaluation (M&E) in 1997 as an integral part of ongoing adaptive management of the program. The findings of two independent evaluations concluded that the BPA-enhanced LE Program (and specifically the tribal component) was a cost-effective salmon & steelhead recovery measure (Vigg 1997; Research into Action 1997).

The following excerpts, from the Budget Annex of the MOA, are relevant to the funding accountability and implementation of the NPT fish & wildlife enforcement project.

### ANNEX ON BUDGET MANAGEMENT AND PROGRAM ACCOUNTABILITY

This Annex is part of the Agreement and shall be interpreted consistently with all provisions of the Agreement. The purpose of this Annex is to provide for more effective regional involvement and accountability in the expenditure of Bonneville ratepayer money for the protection, management, and restoration of fish and wildlife in the Columbia River Basin. **The Parties agree that open and accurate methods for tracking the implementation and performance of**

**activities funded under this Agreement are essential to the success of this Agreement ....**

The commitments and responsibilities of the Parties, Tribes and Council, as described in this Annex, shall be carried out in a manner consistent with the scope of the applicable statutes, treaties, executive orders, and other relevant law. This Annex, along with the Agreement, is not intended to, and does not, create any right to administrative or judicial review except as otherwise available under law. Disputes over the meaning or implementation of the provisions of this Annex should be addressed through the dispute resolution mechanism set forth in Part 9b of the Agreement.

## **A. Budget Management**

### **1. Procedures for Budget Allocation**

**The Parties, the Council and the Tribes have developed, are implementing, and continue to refine procedures for prioritizing and recommending for funding fish and wildlife activities subject to the Agreement.** This Annex describes the expectations of the Parties, the Council and the Tribes as to how these procedures will be refined, with the intent that the Parties, the Tribes, and the Council will, to the extent consistent with applicable law, jointly implement agreed upon procedures for prioritizing and funding all activities to restore fish and wildlife populations in the Columbia River Basin supported by expenditures from the direct program, reimbursable, and capital cost categories described in Part 6 of the Agreement. These procedures include the following items:

- (a) **The Parties, the Council and the Tribes will develop multi-year workplans for implementation of fish and wildlife measures** funded by expenditures from the categories in Part 6 of the Agreement. ... Development of such workplans shall be guided by Council, state, tribal, and federal fish and wildlife restoration and protection policies. Workplans shall identify schedules, deliverables, and decision points. Multi-year workplans will be subject to review and public comment prior to adoption. Multi-year workplans may be modified on the basis of annual reviews described below. A draft five-year workplan will be prepared for anadromous and resident fish and wildlife by mid-November, 1996.
- (b) **An annual workplan will be developed each year on the basis of the multi-year workplan** to set budget priorities for the applicable fiscal year, identify projects and costs, provide a means for measuring progress, and provide a mechanism for informing and involving the public in fish and wildlife restoration activities and reporting results of workplan implementation. Annual workplan development may result in changes to the multi-year workplans. **Adaptive management will be used in developing**

**the annual workplans to respond to outcomes of project activities, results of monitoring and evaluation, and other circumstances as appropriate. Adaptive management requires that the Parties, the Tribes, and the Council incorporate flexibility in budget development and planning.** The annual workplan will be developed on the basis of a standard set of criteria (paragraph (c) below) and reviews that address inter-relationships or common objectives among projects. Prior to adoption, annual workplans will be made available for public comment.

- (c) **The Parties, the Tribes, and the Council will implement coordinated and integrated prioritization processes for all expenditures, using consistent criteria that allow for cost effective choices across all expenditures categories. .... These criteria will be consistent with applicable law and will address sound scientific principles, benefits to fish and wildlife, definition of objectives, fiscal accountability, and outcomes with provisions for monitoring and evaluation. ...**
- (d) **Project sponsors will provide detailed project information to allow development of annual and multi-year workplans including realistic future year costs....**
- (e) **The Parties, the Tribes and the Council shall develop procedures for sharing federal budget and financial information necessary to allow the Tribes and the Council to fully participate in the Bonneville fish and wildlife budget management and allocation processes described in the Agreement and the Annex....**

## **B. Project and Program Accountability**

**The Parties, the Tribes, and the Council agree that greater accountability is desired for projects and programs implemented with the fish and wildlife funding from the categories described in this Agreement.**

The current MOA is scheduled to expire after the year 2001. BPA is now working with other agencies, Northwest tribes and states to develop an agreement on post-2001 financing for Columbia Basin fish and wildlife programs. The structure of the agreement and how it works is open for regional discussion and is yet to be determined.

### **b. Proposal objectives.**

#### **7 b. NPT Enforcement Objectives:**

## Law Enforcement Effectiveness Objectives and Biological Objectives

The following three LE effectiveness objectives and three biological objectives have been identified for evaluation of the Nez Perce Tribe's LE program.

### Law Enforcement Effectiveness Objectives:

- Increased LE effectiveness throughout the watersheds of the Columbia Basin under the co-management of the NPT -- via increased public awareness, voluntary compliance with laws and rules, and deterrence of illegal activities.
- Increased LE effectiveness in anadromous and resident fish protection via annual planning to ensure effective use of personnel and equipment, and close coordination with fisheries management and regulatory agencies.
- Increased LE effectiveness in anadromous and resident fish protection via long-term strategic planning, tribal coordination at a LE command levels, and support of state & federal enforcement agencies.

### Biological Objectives:

- Improvement in adult salmon survival during in-river migration as measured by temporal trends in inter-dam and reach conversion rates.
- Increased survival of juvenile salmon and protection of critical habitat as measured by case studies, and compliance with various regulations.
- Increased survival of resident fish populations via enforcement, habitat protection, and public outreach.

These objectives can be measured against specific biologically-based performance criteria and metrics (Table 1).

**Table 1. Performance criteria, null hypotheses, and metrics for evaluation of biological benefits of enhanced law enforcement.**

Performance Criteria	Null Hypotheses	Metrics
<b>Adult salmon passage survival through the migration corridor and fisheries</b>	An increase in the level of enforcement in the mainstem Columbia River does <u>not</u> reduce illegal take and improve adult salmon survival.	Inter-dam conversion rates, Bonneville to Lower Granite dams. Radio telemetry studies in tributary areas.
<b>Protection of critical spawning and rearing habitat of anadromous salmonids</b>	Enforcement of habitat regulations <sup>5</sup> in tributary areas does <u>not</u> increase natural production success or improve the integrity of	Compliance rates with laws and rules for the protection of stream habitat, riparian zones, watersheds and ecosystems.

<sup>5</sup> State and Federal water quality standards, Forest Practices Acts, BLM grazing regulations, etc.

	critical habitat.	
<b>Juvenile salmonid out-migration survival through the migration corridor</b>	Enforcement of “trout” fishing regulations and water diversion & screening regulations does <u>not</u> increase juvenile salmonid survival in tributaries and mainstem.	Compliance rates with “trout” fisheries and screening regulations on mainstem pump and tributary diversions.
<b>Inter-agency coordination</b>	Enhanced inter-agency coordination and resource sharing does <u>not</u> improve efficiency and cost-effectiveness of LE efforts.	Contacts, enforcement statistics, habitat protected, and fish saved via inter-agency task forces per cost level.
<b>Public participation</b>	Improved public education and awareness does <u>not</u> enhance LE efforts via public support and involvement.	Public opinion polls, public volunteer work, voluntary compliance with laws and rules, “poacher hotline” information on violations.
<b>Resident Fish</b>	Increased levels of law enforcement for Columbia Basin resident fish species and their critical habitats does <u>not</u> improve the species’ life cycle survival and population levels.	Enforcement statistics; compliance rates with laws and rules; fisheries statistics; public awareness.

**c. Rationale and significance to Regional Programs.**

**7 c. NPT Enforcement Rationale:**

**Relationship to Treaty Rights, US v. Oregon, the Columbia River Management Plan**

Authority for Tribal fisheries law enforcement is derived from Treaties with the U.S. Government. It has consistently been held that treaties were grants of rights from tribes to the United States and that anything not expressly granted, was reserved. It is fundamental that a federal treaty guaranteeing certain rights to the subjects of a signatory nation is self-executing and supersedes state law, U.S. v. Washington, and that a state may enact no statute or regulation in conflict with a treaty between the United States and an Indian Tribe. In U.S. v. Oregon, the Court stated the following:

*In 1855, the United States negotiated separate treaties with each of the above named Indian tribes. These treaties were proclaimed and ratified*

*by the United States in 1859. ... Each of these treaties contained a substantially identical provision securing to the tribes “the right of taking fish at all usual and accustomed places in common with citizens of the territory.”*

Similarly, in United States v. Washington, where the nature and scope of treaty reserved fishing rights of fourteen Indian Tribes, including Yakama, were at issue, the Court there found that:

*“Each treaty in this case contains a provision substantially identical to that in the Medicine Creek treaty: ‘The right of taking fish, at all usual and accustomed grounds and stations...’”*

The U.S. v. Oregon litigation was initiated by the United States in 1968 (refer to Vigg 1996 for more detail). It established the Tribes’ co-management responsibilities for Columbia Basin fisheries -- as described in the resultant Columbia River Fish Management Plan. The U.S. v. Oregon case began as a means of establishing the nature and extent of treaty reserved rights of four Indian Tribes<sup>6</sup> to fish in the main stem of the Columbia River for anadromous fish. Celilo Falls was a fishery of major importance for all of the four tribes prior to its inundation by The Dalles Dam in the early 1950’s. The treaty right to fish had undergone several challenges by state authorities over the years and there was a continued tribal reliance on the Columbia as a primary source of salmon. Current parties to the case include the Nez Perce, Yakama, Warm Springs and Umatilla Tribes, the United States, the states of Washington, Oregon and Idaho, and the Shoshone-Bannock Tribes. Non-treaty commercial fishing interests participate as amicus curiae.

## Relationship to the Northwest Power Planning Council's Fish and Wildlife Program

The ESA listings described below provided an impetus to implement additional measures that could provide immediate protection of depleted salmonid stocks in the Columbia Basin under the auspices of the Northwest Power Act. One such measure was enhanced law enforcement, which was developed via regional consensus in the “*Salmon Summit*” initiated by Senator Mark Hatfield in 1990. The NPPC Program was amended in 1991 a measure to provide for increased levels of harvest law enforcement throughout the Columbia River Basin, and to heighten the public's awareness of the importance of protection of various depleted stocks from over-harvest, incidental catches, and illegal harvest in ocean and river mixed-stock fisheries. The increased law enforcement measure was included in the Strategy for Salmon (NPPC 1992): i.e., Measure 5.5C “*Law Enforcement and Public Education on Impacts of Illegal or Wasteful Fisheries*”. This measure included two parts: (1) Use all available authorities to put a rapid end to all high

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<sup>6</sup> The Nez Perce, Yakama, Warm Springs, and Umatilla Tribes intervened as parties to the United States v. Oregon litigation shortly after it was initiated by the United States in 1968.

seas drift-net fisheries; and (2) Develop, implement, and evaluate an expanded enforcement and public education program to provide additional protection to Columbia River salmonids and weak stocks throughout their life cycle. This enhanced law enforcement and public education measure is likewise included in the NPPC (1994) Program amendments as measure 8.5C:

### **Bonneville and Appropriate Tribal, State and Federal Enforcement Agencies**

8.5C2 Develop and implement an expanded enforcement program to provide additional protection to Columbia Basin salmon and steelhead with an emphasis on weak stocks throughout their life cycle. The program should include an educational component for the public. Fund the needed program and review accomplishments and scope of the program annually with the Council.

### **Relationship to the Endangered Species Act (ESA) and Federal Recovery Plans**

The impetus for initiating enhanced law enforcement as funded by the Bonneville Power Administration (BPA), was to provide additional protection for critically depleted stocks that are listed or proposed for listing under the federal Endangered Species Act of 1973, as amended through the 100th Congress<sup>7</sup>. Under Section 7(a)(1) of the ESA, Federal agencies are mandated "*... to utilize their authorities, in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.*" The ESA specifically lists law enforcement as one of the conservation measures to be used to rebuild threatened or endangered species to achieve de-listing (Section 3(3)). The National Marine Fisheries Service (NMFS) is the federal agency responsible for conducting the ESA process (biological status reviews, proposed listings, determination of threatened or endangered status, and Section 7 & 10 consultations) for anadromous salmonids in the Columbia Basin. In contrast, the parallel ESA process for resident fish is conducted by the U.S. Fish and Wildlife Service (USFWS).

Numerous Columbia Basin anadromous salmonid stocks and resident fish species are severely depleted and have been petitioned, proposed or listed as threatened or endangered species under the authority of the ESA depleted. In the "NMFS Biological Assessment of Impacts of Proposed 1997 Fisheries in the Snake River Basin on Snake River Salmon Listed Under the Endangered Species Act" -- it specifically states

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The ESA as Amended by P.L. 94-325, June 30, 1976; P.L. 94-359, July 12, 1976; P.L. 95-212, December 19, 1977; P.L. 95-632, November 10, 1978; and P.L. 96-159, December 28, 1979.



*“Enforcement patrols ensure that anglers comply with regulations, and provide additional information on the handle of non-target fish”.*

The NMFS Recovery Team conducted a comprehensive evaluation of enhancement measures needed to rebuild and de-list Snake River salmon populations. The recovery Team recommended continuation of a vigorous fishery law enforcement program (Bevan et al. 1994):

*Some aspects of the Recovery Plan will require law enforcement. It would not be prudent to expend large sums of money on downstream passage, or to require major changes in how fishing is operated, and then lose a considerable fraction of increased survival because of failure to control such aspects as illegal fishing, unscreened diversions or habitat degradation. ... The BPA, the fishery agencies, and the tribes should continue the Enhanced Fishery Enforcement Program.”*

### Relationship To The Region's Hydro-Power System (Mitigation)

The primary area to which the enhanced tribal law enforcement effort has been directed is the mainstem of the Columbia River, in particular zone 6 which is the area between Bonneville and McNary dams. Zone 6 fisheries are very complex with several different species, e.g., various salmon stocks, steelhead, sturgeon, walleye, and shad, different seasons for each species/stock, and different types of fisheries, e.g., tribal treaty commercial and C&S fisheries, and sport fisheries. All of the fish in these fisheries are affected by the operation of the hydro-power system. Most of these fish species benefit from specific mitigation measures targeted at them for which the Bonneville Power Administration is financially liable. For example, BPA's investments in flows, the Corps of Engineer's investment in fish ladders, and U.S. Fish and Wildlife Service's investment in artificial propagation of spring chinook in the Snake River Basin result in financial obligations to the Bonneville Power Administration. CRITFE's enhanced efforts protect the fruits of these investments, Snake River spring chinook in this example, and other stocks benefited by mitigation measures under the Act.

The hydro-power system has profoundly changed the relationship of tribal people to the Columbia River. But for the existence of the hydro-power system, tribal fisheries would be substantially different in character (e.g. the Celilo Falls fishery would still exist) and tribal fishery management would be far simpler since salmon would be in much greater abundance. It is proper for the federal government through Bonneville to fund the enhanced law enforcement effort that focuses on the geographic areas impounded by the dams.

## Relationship to the Memorandum of Agreement on BPA funding of Fish & Wildlife Enhancement Projects (MOA)

In late October 1995, the Clinton Administration and the Northwest congressional delegation reached an administrative agreement intended to stabilize BPA's fish and wildlife obligations over the following 6 years. In 1996, the Memorandum of Agreement (MOA) was negotiated between BPA, Corps of Engineers, Bureau of Reclamation, U.S. Fish and Wildlife Service, and National Marine Fisheries Service (Parties) in consultation with the Northwest Power Planning Council and Columbia Basin Tribes. The MOA implements the administrative agreement between the Clinton Administration and the Northwest congressional delegation to stabilize BPA's fish and wildlife obligations, while protecting, conserving and enhancing Columbia Basin fish & wildlife resources.

The purpose of the MOA is to set forth the expectations of the Parties for the Fiscal Years 1996 through 2001 with regard to the budget commitment of BPA for the fish and wildlife costs covered under this Agreement, including a description of the procedures to be used to account for the spending of this budget commitment. However, the fish and wildlife obligations of the United States are not limited by the MOA. The Bonneville fish and wildlife budget commitment and this Agreement implementing that commitment are intended to reflect three working principles:

- ◇ First, the MOA is intended to provide greater financial certainty to Bonneville through a stable, multi-year budget for its fish and wildlife obligations.
- ◇ Second, this MOA is intended, barring unforeseen events, to identify a budget to meet Bonneville's fish and wildlife funding obligations as described in the Agreement.
- ◇ The MOA's third working principle is to assure that the funds that are expended for the survival, protection, mitigation, and recovery of dwindling runs of salmon and other fish and wildlife are expended soundly and efficiently.

Several sections of the MOA discuss Indian Treaty Rights:

**2b Region's Indian Tribes.** Columbia River Basin Indian Tribes include any tribe or band located in whole or in part in the Columbia River basin and which has a governing body which is recognized by the Secretary of the Interior. Along with their inherent sovereignty, these Tribes generally possess rights reserved by treaty, executive order, or statute to resources such as fish and wildlife affected by the development and operation of the Federal Columbia River Power System.

**(1) Trust responsibilities:** This Agreement in its implementation will require significant interaction and cooperation with the region's Indian Tribes. The Parties recognize that Indian Tribes are separate sovereigns with governmental rights over their lands and people. These governmental rights and authorities extend to any natural resources which are reserved by or protected in treaties, executive orders and federal statutes. The United States has a trust

obligation toward Indian Tribes to preserve and protect these rights and authorities. This trust obligation is reflected in such federal statutes as the Indian Self-Determination Act, the Indian Financing Act, the Snyder Act, and the Non-Intercourse Act, to name but a few. The Parties acknowledge the federal government's unique and continuing relationship with and responsibility toward Indian Tribes and as part of that responsibility will provide for meaningful tribal participation in the planning, conduct and administration of the fish and wildlife activities affected by this Agreement.

**(2) Co-management:** The Parties also recognize that Columbia River Basin Indian Tribes have vital interests directly affected by activities covered in this Agreement. The Parties also recognize the Tribes' interests in self-determination and the Tribes' interests in controlling their resources and their relationships both among themselves and with non-Indian governments, organizations, and persons. The Parties commit to building more effective day-to-day working relationships with the Tribes regarding the Tribes' co-management of affected fish and wildlife resources and respecting the rights of self-government due the sovereign tribal governments. Each of the Indian Tribes of the Columbia River Basin has developed fish and wildlife restoration plans. For example, the members of the Upper Columbia United Tribes have developed an Upper Columbia Resident Fish 10-year Restoration Plan. Also, four of the Basin's Indian Tribes' have adopted a restoration plan for Columbia River Basin anadromous fish, *Wy-Kan-Ush-Mi Wa-Kish-Wit* (Spirit of the Salmon). In these plans, the Tribes call for measures to be carried out by the Parties and funded by Bonneville. Among other things, the Spirit of the Salmon plan calls for improved accountability for federal investments in anadromous fish restoration. The Agreement has implications for the way in which these and other fish and wildlife restoration actions of the Columbia River Basin Indian Tribes will be carried out. It is thus appropriate and necessary, as identified in the Agreement, for the Parties to regularly consult with the Indian Tribes of the Columbia River Basin on their unique interests even though they are not parties to the Agreement, although consultation in and of itself does not fulfill the federal government's trust obligations. When in this Agreement the Parties agree to consult with individual Indian Tribes about some matter, the Parties understand this to mean a significant effort to communicate and discuss the relevant issues with Tribes at the policy level in an attempt to reach a common viewpoint with the Tribes.

**9d Rights of Indian Tribes not affected:** The Parties accept and affirm that nothing in this Agreement is intended to nor shall it create, abrogate, diminish, or otherwise alter the responsibilities and obligations of the United States toward Indian Tribes under any federal treaty, executive order or statute. Nothing in this Agreement is intended to nor shall it create, abrogate, diminish, or otherwise alter any right reserved or established by an Indian Tribe in any treaty, executive order, or statute. Nor shall this agreement diminish, eliminate, or otherwise

modify any obligations or duties of the Parties under any other federal law or regulation (now enacted, or as amended) including, but not limited to, those that pertain or relate to fish and wildlife, protection of the environment, and protection of cultural and historical resources. Funding for cultural and historical resources protection is outside of and not affected by this Agreement.

The MOA has provisions for dispute resolution:

**9b Dispute resolution concerning interpretation of the provisions of this Agreement:** Should disagreement arise as to the interpretation of the provisions of this Agreement, or amendment and/or revisions thereto, which cannot be resolved, the area(s) of disagreement shall be reduced to writing by each party to the dispute and presented to the Parties, the Council and the Tribes for mutually acceptable resolution within the region consistent with the stated purposes of this Agreement and each Party's authorities. If regional agreement on interpretation is not reached within thirty days, the Parties shall forward their disagreement in writing to their respective higher officials and then to the Council on Environmental Quality and Office of Management and Budget for appropriate resolution. Such resolution will be reached in consultation with the Council and the Tribes. The Parties, the Council and the Tribes may develop a more detailed or different dispute resolution process to handle all or some of the disputes under the Agreement. If so, the Annex will describe the dispute resolution process developed.

The MOA Budget Annex describes a regional process for funding and accountability of Columbia Basin fish & wildlife enhancement projects. The process of regional multi-year implementation plan (MYIP) development, CBFWA annual work plans, project prioritization process, and project funding changes via adaptive management are documented below. The FY 1998 Nez Perce law enforcement proposal, as a component of the basin-wide enhanced Law Enforcement program:

- ◇ was submitted to the regional fish & wildlife prioritization process,
- ◇ was included in the multi-year MYIP and CBFWA annual work plan, and
- ◇ ultimately the LE Program received CBFWA's recommendation for FY 1998 funding at a level of \$4.0 million.

The overall LE Program -- and specifically the CRITFE and Nez Perce tribal components -- were subjected to independent *third-party* scientific monitoring & evaluation (M&E) in 1997 as an integral part of ongoing adaptive management of the program. The findings on the independent M&E's concluded that the BPA-enhanced LE Program (and specifically the tribal component) was a cost-effective salmon & steelhead recovery measure.

#### **d. Project history**

#### **7 d. NPT Enforcement History:**

In the fall of 1996, the Bonneville Power Administration (BPA), in conjunction with regional law enforcement entities, initiated a tribal component of the ongoing Columbia Basin Law Enforcement Program, Project 92-024 (Vigg 1996). The tribal component was designed to significantly increase the amount of fisheries and habitat protection in tributary subbasins -- on Indian reservations and ceded lands of the Columbia Basin. The Nez Perce Tribe (NPT) submitted a statement of work in August; subsequently in December BPA approved the FY 1997 budget of \$302,757 for implementation of enhanced the NPT fishery & habitat law enforcement demonstration project as part of the ongoing BPA Project 92-024 (Table 2). In addition, the NPT provided a cost-share of \$126,965 to fund supervisory / administrative positions and facilities. During 1997 the Nez Perce Tribal fish and wildlife program was successful in implementing project objectives and providing enhanced protection of salmon, steelhead, and resident fish, and their critical habitats throughout the Nez Perce Tribe's jurisdiction (Vigg 1998, In Preparation).

**Table 2. Summary of BPA budget request and Tribal cost-share for the tribal fisheries & habitat law enforcement component, Nez Perce Tribe, Department of Fisheries Resource Management, Enforcement Division FY 1997 and FY 1998.**

<b>Fiscal Year</b>	<b>Tribal FTE</b>	<b>Tribal Cost</b>	<b>BPA FTE</b>	<b>BPA Cost</b>
<b>1997</b>	1	\$126,965	3	\$302,757
<b>1998</b>	2	\$154,286	4	\$468,388

In 1998, Nez Perce Tribal enforcement efforts will be increased by two new field officer positions -- one additional BPA-funded position and one additional BIA-funded position. This additional enforcement protection is needed for the Nez Perce Tribe to fulfill its treaty rights & responsibilities relative to natural resource management and to assist the NPT fisheries resources program in carrying out its expanded enhancement program pursuant to fish & wildlife mitigation under the Northwest Power Planning Council's Program pursuant to the Power Act.

- ◇ **The FY1998 BPA budget request is \$468,286 and the Nez Perce cost share is \$154,286 -- for Nez Perce Tribal fish & wildlife enforcement for 1998 implementation.**

This additional amount of fisheries and habitat enforcement effort will help correct the deficit previously existing in the watersheds contained within the jurisdiction of the Nez Perce Tribe. The results of the *Tribal Tributary Law Enforcement Needs Assessment* clearly showed that fish & wildlife enforcement efforts were lacking in upriver tributary regions -- a small fraction of the combined enforcement efforts on the mainstem lower Columbia River. The primary conclusion of the assessment was that additional Tribal fisheries and habitat enforcement was needed to provide enhanced protection for

anadromous salmonids and resident fish on reservations and ceded lands within the Tributary subbasins above Bonneville Dam (Vigg and Stevens 1996, page 70):

“My analysis of LE effort clearly showed that the intensity of fisheries and habitat enforcement in tributaries is very low at present ( $< 0.8 \text{ hrs/mi}^2/\text{year}$ ) throughout the Columbia Basin above Bonneville Dam. In comparison, the annual intensity of enforcement effort in mainstem fisheries areas is much greater, i.e., 35 to 110  $\text{hrs/mi}^2$ . In response to issue statements in a questionnaire, most (92%) of the LE chiefs and salmon managers agreed that additional Tribal Fish & Wildlife enforcement officers could provide enhanced protection to anadromous fish and their critical habitats in the Columbia Basin. I conclude that the effectiveness of the Columbia Basin Law Enforcement Program could be greatly improved by integrating and coordinating additional fish and habitat enforcement effort by Indian Tribes on reservations and ceded lands.”

**e. Methods.**

**7 e. NPT Enforcement Methods:**

Methods for the Nez Perce Tribe's law enforcement demonstration project

**Goal.** The goal of the BPA-enhanced Nez Perce Law Enforcement project is to reduce illegal take<sup>8</sup> of Columbia River Basin salmon, steelhead, and resident fish on all watersheds under the jurisdiction of the Nez Perce Tribe.

Specific goals and objectives of the Nez Perce Tribal fisheries enforcement projects are consistent with the regional fish & wildlife conservation and enhancement efforts, i.e.:

- ◇ the basin-wide enforcement goal of reducing all categories of illegal take.
- ◇ the goals and objectives of the Nez Perce Tribe's fisheries Resource Management Program;
- ◇ the comprehensive Fish and Wildlife enhancement actions as planned in the CBFWA multi-year implementation Plan (MYIP), and the Northwest Power Planning Council's Fish & Wildlife Program; and
- ◇ the salmon, steelhead and sturgeon recovery efforts described in proposed recovery plans of the four Treaty Tribes (Nez Perce, Umatilla, Warm Springs and Yakama Tribes 1995), the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

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<sup>8</sup> The ESA defines “take” as follows: “*The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*”

**Scope.** The conceptual scope of the overall program is the entire life cycle of the target fish species, i.e., “gravel to gravel”. The geographical scope of the Nez Perce enforcement program is primarily the Nez Perce reservation and ceded lands in the tributary subbasins of the Columbia River system. Furthermore, in cooperation with the Columbia River Inter-Tribal Fish Commission, the Nez Perce Tribe assists with mainstem fisheries enforcement in Zone 6 of the mainstem Columbia River. The enhanced Nez Perce Tribal enforcement protection will also extend to all other fish & wildlife populations within Nez Perce territory, including white sturgeon, resident fish and wildlife. This enhancement “spin-off” benefit is considered by all participants to be beneficial to fish & wildlife resources of the Columbia Basin.

**Approach.** The approach we are taking is threefold. First, to substantially increase and maintain the levels of harvest and habitat law enforcement throughout the Nez Perce Reservation and ceded lands. Secondly, to enhance the efficiency of this increased harvest and habitat enforcement effort by promoting cooperation and assistance from appropriate federal, state, tribal, regional and local entities. Thirdly, to educate the public on the plight of specific fish stocks that are in danger of extinction and the need to protect their critical habitats; and make the public aware of the importance to society of conserving the tribal cultural values and the diversity of anadromous salmon and steelhead, sturgeon, and resident fish & wildlife for future generations.

### **Experimental Design.**

The following outline summarizes an experimental design for the Nez Perce Tribe’s law enforcement demonstration project for implementation in tributary subbasins and watersheds starting in 1997:

- ◇ Increase Nez Perce Tribal tributary law enforcement efforts by adding four field officers.
- ◇ Enhance law enforcement training to include appropriate state and federal police academies, and specific training on environmental crime and habitat regulations.
- ◇ Enhance effectiveness with adequate vehicles (including operation and maintenance) sophisticated equipment and communications -- for all tribal LE officers.
- ◇ Improve cost-effectiveness with inter-agency coordination and special emphasis task forces.
- ◇ Improve public participation and voluntary compliance through information and education on Indian Treaty rights and responsibilities.
- ◇ Take directed actions to protect anadromous fish, resident fish & wildlife, and critical habitats on reservations; and in cooperation with the lead state or federal agency on ceded lands.
- ◇ Take directed actions to enforce all natural resource regulations (fisheries, wildlife and habitat) on reservations; and in cooperation with the lead state or federal agency on ceded lands.
- ◇ Integrate Tribal tributary enforcement with the ongoing BPA-funded law enforcement program coordinated by the Columbia Basin Law Enforcement Council.
- ◇ Adaptively manage the program via monitoring and evaluation (M&E).
- ◇ Develop biologically based performance criteria for each operational objective.

- ◇ Improve data management systems to collect valid enforcement statistics, fisheries statistics, and habitat data.
- ◇ Organize the evaluation of desired/actual achievements in terms of:
  - ⇒ Input (e.g., increased budget, personnel, equipment, coordination),
  - ⇒ Output (e.g., enforcement contacts, warnings, arrests, seizures and other statistics), and
  - ⇒ Outcome (e.g., salmon saved, critical habitat protected).
- ⇒ **Focus on Outcomes, i.e., biological results.**

Monitoring & evaluation of the program can be conducted according to the performance criteria, null hypotheses and metrics outlined in the following Table.

**M&E Table 3. Performance criteria, null hypotheses, and metrics for evaluation of biological benefits of enhanced law enforcement.**

<b>Performance Criteria</b>	<b>Null Hypotheses</b>	<b>Metrics</b>
<b>Adult salmon passage survival through the migration corridor and fisheries</b>	An increase in the level of enforcement in the mainstem Columbia River does <u>not</u> reduce illegal take and improve adult salmon survival.	Inter-dam conversion rates, Bonneville to Lower Granite dams. Radio telemetry studies in tributary areas.
<b>Protection of critical spawning and rearing habitat of anadromous salmonids</b>	Enforcement of habitat regulations <sup>9</sup> in tributary areas does <u>not</u> increase natural production success or improve the integrity of critical habitat.	Compliance rates with laws and rules for the protection of stream habitat, riparian zones, watersheds and ecosystems.
<b>Juvenile salmonid out-migration survival through the migration corridor</b>	Enforcement of “trout” fishing regulations and water diversion & screening regulations does <u>not</u> increase juvenile salmonid survival in tributaries and mainstem.	Compliance rates with “trout” fisheries and screening regulations on mainstem pump and tributary diversions.
<b>Inter-agency coordination</b>	Enhanced inter-agency coordination and resource sharing does <u>not</u> improve efficiency and cost-effectiveness of LE efforts.	Contacts, enforcement statistics, habitat protected, and fish saved via inter-agency task forces per cost level.
<b>Public participation</b>	Improved public education and awareness does <u>not</u>	Public opinion polls, public volunteer work, voluntary

<sup>9</sup> State and Federal water quality standards, Forest Practices Acts, BLM grazing regulations, etc.



	enhance LE efforts via public support and involvement.	compliance with laws and rules, "poacher hotline" information on violations.
<b>Resident Fish</b>	Increased levels of law enforcement for Columbia Basin resident fish species and their critical habitats does <u>not</u> improve the species' life cycle survival and population levels.	Enforcement statistics; compliance rates with laws and rules; fisheries statistics; public awareness.

Factors that would limit the success of the program include: (1) disruption of funding causing lost investment in trained field officers and a breach in the protection of the fishery resources and habitat, and (2) lack of funding for the integral M&E component of the program -- that will enable the law enforcement project to practice adaptive management.

**f. Facilities and equipment.**

**7 f. NPT Enforcement Facilities:**

The Nez Perce Tribe maintains office and equipment storage facilities for the tribal law enforcement program, as part of its cost share. Since 1997 was the initial year of the NPT Law Enforcement demonstration project, much of the start-up equipment (e.g., radios, boats, weapons, officer equipment, and vehicle accessories) have already been budgeted. A detailed FY1997 budget listing non-expendable equipment purchased in the initial year and a current equipment inventory list are available on request.

**g. References.**

**7 g. NPT Enforcement References:**

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ESA (The Endangered Species Act of 1973, as amended through the 100th Congress). 1973. The ESA as Amended by P.L. 94-325, June 30, 1976; P.L. 94-359, July 12, 1976; P.L. 95-212, December 19, 1977; P.L. 95-632, November 10, 1978; and P.L. 96-159, December 28, 1979.

- Memorandum of Agreement (MOA). 1996. Memorandum of Agreement among the Departments of Army, Commerce, Energy, and Interior concerning The Bonneville Power Administration's financial commitment for Columbia River Basin Fish & Wildlife Costs -- with an Annex on budget management and program accountability.
- Nez Perce, Umatilla, Warm Springs and Yakama Tribes. 1995. WY-KAN-USH-MI WA-KISH-WIT, *The Spirit of the Salmon*. The Columbia River Anadromous Fish Plan of the Nez Perce, Umatilla, Warm Springs and Yakama Tribes.
- Northwest Power Planning Council (NPPC). 1994. Columbia River Basin Fish and Wildlife Program. Publication 94-55. December 15, 1994. Northwest Power Planning Council, Portland, Oregon.
- US v. Oregon*. 1987. The Columbia River Fish Management Plan. Parties to US v Oregon, November 9, 1987. 61 Pages + Appendices.
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- Vigg, S. 1994. Increased levels of harvest & habitat Law Enforcement and Public Awareness for anadromous salmonids and resident fish in the Columbia River Basin. Project 92-024. Project Description for a comprehensive Columbia Basin cooperative Law Enforcement Program comprised of six Grants and Inter-Agency Agreements with: Columbia River Inter-Tribal Fish Commission, Oregon Department of State Police, Washington Department of Fish and Wildlife, Idaho Department of Fish and Game, National Marine Fisheries Service, and Montana Department of Fish, Wildlife & Parks. December 31, 1994. Bonneville Power Administration, Portland, Oregon.
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- Vigg, S. 1996. Tribal component of the enhanced harvest & habitat law enforcement and public awareness for anadromous salmonids and resident fish in the Columbia River Basin -- FY 1997 Statement of Work. A Comprehensive Columbia Basin Fishery Law Enforcement Program Comprised of Inter-Agency Agreements with the Columbia Basin Law Enforcement Council (CBLEC) Member Agencies and Tribes -- and the U.S. Fish and Wildlife Service. Technical document prepared on

September 25, 1996 for the Columbia River Inter-Tribal Fish Commission by S.P. Cramer and Associates, Inc., Gresham, Oregon.

Vigg, S. and R. Stevens. 1996. *Needs Assessment* of Tribal law enforcement in Columbia River tributaries relative to anadromous salmonid mitigation & restoration. Final Report prepared on August 1, 1996 for CRITFC, by S.P. Cramer and Associates, Inc., Gresham, Oregon. 109 pp + Appendices.

Vigg, S. 1997. Columbia River Inter-Tribal Fish Commission, Department of Fisheries Enforcement (CRITFE) Five-Year Performance Report, 1992 - 1996. August 21, 1997. Submitted to the Columbia River Inter-Tribal Fish Commission by S.P. Cramer & Associates, Inc., Gresham, Oregon.

## **Section 8. Relationships to other projects**

### **8. NPT Enforcement Project Relationships:**

The NPT law enforcement program will provide fisheries and critical habitat protection to insure that investments made to increase natural and artificial production are realized throughout the life cycle -- i.e., from incubating eggs to returning adults. NPT will enforce regulations, rules & codes for fisheries targeted on hatchery & supplementation production; protect brood stock in ladder entrances & hatchery ponds; protect incubation and rearing structures (e.g., egg boxes) from vandalism.

The Nez Perce law enforcement program in tributary watersheds will coordinate and cooperate with the Inter-Tribal enforcement program in Zone 6 of the mainstem Columbia River. Resource sharing between tributary and mainstem tribal enforcement efforts will maximize the effectiveness of fish & wildlife resource protection.

## **Section 9. Key personnel**

### **9. NPT Enforcement Project Leader**

#### **RESUME**

#### **ADAM A. VILLAVICENCIO**

**Current Position:** Captain, Nez Perce Tribal Fisheries / Conservation Enforcement

Date Hired: 11-28-95

**Duties:** Overall administration and command of the fisheries / conservation enforcement program. The Captain is responsible for planning and directing all facets of the enforcement program, providing leadership and direction to all tribal enforcement

personnel, directing an office staff and a team of supervisory and field level enforcement officers engaged in the patrol and investigation, apprehension and detention of persons violating Tribal, and Federal conservation, Fish and Wildlife law of the United States. These activities involve the full range of enforcement work, i.e., interviewing suspects and witnesses; conducting searches and seizures with and without warrants; securing and serving search warrants; making arrests detaining suspects; gathering and preserving evidence; preparing documentation for court actions. The Captain monitors enforcement operations, regularly evaluates the efficiency and effectiveness of accomplishments and independently adjusts priorities as necessary. The enforcement program commander ensures that fish and wildlife law enforcement activities are coordinated with other Tribal, Federal and State enforcement agencies for maximum impact as needed.

**Qualification:**

1. Sept., 1996, Advanced Police Management, Federal Law Enforcement Training Center, Indian Police Academy, Artesia, N.M.
2. May, 1996, Indian Law Training, Council Lodge Institute, Spokane, WA.
3. July, 1993, Fisheries Marine Enforcement Academy, Washington State Fisheries Patrol, Vancouver, WA.
4. Dec., 1993, Intermediate Certificate/Certified Police Officer, Oregon Police Academy, Monmouth, OR.
5. June, 1992, Police Supervisory Training, Oregon Police Academy, Monmouth, OR.
6. March, 1988, Certified Police Officer, Oregon Police Academy, Monmouth, OR.
7. Nov., 1986, Graduated Indian Police Academy, Federal Law Enforcement Training Center, Marana, AZ.
8. Other certificates and training information available on request.

**Previous Position:** Patrol Corporal, Columbia River Inter-Tribal Fisheries Enforcement  
Date Hired: 4-87 Date Left: 12-93

Duties included overall field operations and command of approximately eight (8) field officers. I was the first line supervisor and acted as liaison between patrol and upper management staff. I conducted additional field & office duties as assigned.

**Schools:** Benson High School, Portland, OR (Diploma, 1981) Lewis Clark State College, Lewiston, ID (Major: Law Enforcement, 1983-85, degree not completed).

## **Section 10. Information/technology transfer**

### **10. NPT Enforcement Technology Transfer:**

Transfer of technology and information derived from the Nez Perce Tribe's fish & wildlife law enforcement project will be accomplished via several communications media:

- (1) quarterly and annual reports to BPA,
- (2) coordination meetings with regional law enforcement entities,
- (3) development of annual work plans in conjunction with the Nez Perce Natural Resource Management Division,
- (4) update of the five-year NPT enforcement strategic plan on an annual cycle,
- (5) monitoring and evaluation report by an independent “third-party” consultant,
- (6) fishery season restrictions (e.g., opening & closing dates) and regulation notices distributed to tribal fishers,
- (7) occasional news releases to the newspaper/radio/television media as needed to inform the general public on regulations or other fish & wildlife issues,
- (8) oral presentations at reviews called for by NPPC and CBFWA, and
- (9) periodic presentations at enforcement and/or fisheries conferences by the project leader and fisheries consultant.

Additional 35 Page Statement of Work on file with incoming original.